IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7008 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

R P DANGER

Appearance:

1. Special Civil Application No. 7008 of 2001

MR HARDIK C RAWAL for Petitioner No. 1

MR MJ SHELAT FOR MR GM JOSHI for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 19/03/2002

ORAL JUDGEMENT

#. Heard Mr.Hardik Rawal, learned advocate appearing on behalf of the petitioner - Corporation and Mr.M.J.Shelat, learned advocate for Mr.G.M.Joshi, learned advocate on behalf of the respondent workman.

#. Rule. Mr.M.J.Shelat, learned advcoate for respondent workman waives formal service of Rule on behalf of the respondent workman. With the consent of the learned advocates for the parties, this matter is taken up for final hearing.

#. The petitioner Corporation has challenged the award passed by the Labour Court, Surat in Reference No.315/1989 dated 6th January, 2001 wherein the Labour Court has granted reinstatement with continuity of service with all consequential benefits and 25 % backwages of interim period. Learned advocate Mr.H.C.Rawal on behalf of the petitioner Corporation has submitted that on date 31-1-1986 when the respondent workman was on duty as Conductor on Bhairav to Surat route, his bus was checked by the checking squad of the petitioner at Nana Varrachha and at that time there were 55 passengers in the said bus. The checking squad noticed that form a group of 40 passengers, the respondent had collected Rs.40/- [Rs.1 each] but till the time of checking no tickets were issued to them. It is also pointed out that when the checking inspector asked for the unpunched tickets, the respondent workman misbehaved with the checking staff and not signed the statements of passengers and that is how the chargesheet was served on the respondent workman. After completion oft he departmental inquiry, the respondent workman has been dismissed from service on 22nd Augusts, 1986. Therefore, Mr.Rawal, learned advocate for petitioner has submitted that the labour court has committed error by granting reinstatement while exercising the powers under Section 11-A of the Industrial Disputes Act, 1947 in such clear case of misappropriation by respondent conductor when he did not issue tickets though fare was collected and therefore, the labour court further committed an error while granting reinstatement with continuity of service and 25 % backwages of the interim period and the same is therefore required to be interfered with by this Court while exercising the powers under Article 226 and 227 of the Constitution of India.

#. Learned advocate Mr.Shelat on behalf of the respondent workman has submitted that after appreciating the evidence which was led in the departmental inquiry, the Labour Court also considering the evidence of one witness from the petitioner Corporation was examined before the Labour Court, has come to the conclusion that the charges of dishonesty and misappropriation has not been found to have proved against the respondent workman. It is also submitted that on the contrary all the forty tickets were found from the bus which were found with

regular punch marks. Therefore, once the labour court has come to the conclusion that charge levelled against the respondent workman was not found to have proved and considering the entire record, the labour court has rightly exercised the powers under Section 11-A of the Industrial Disputes Act, 1947. It is also submitted that the labour court has only awarded 25 % backwages which is legal and valid and same does not requires any interference by this Court while exercising the powers under Article 226 and 227 of the Constitution.

#. I have considered submissions of the learned advocates for the parties. Perusal of award impugned in this petition reveals that before the labour court, the respondent workman filed statement of claim vide Exh.3 and the petitioner corporation filed written statement at Exh.5. Thereafter, the petitioner Corporation has produced necessary documents at Exh.6 including inquiry papers as well as default card of the respondent workman. Before the labour court, the respondent workman has challenged the legality and validity of the departmental inquiry Exh.14. Thereafter, the labour court has examined the issues and finally passed the award. The labour court has come to the conclusion that the departmental inquiry is vitiated and contrary to the principles of natural justice. Thereafter, opportunity was given the petitioner to prove the misconduct against the respondent workman. Therefore, the petitioner Corporation has examined the witness Shri A.J.Murad at Exh.50. Except this witness, no other evidence was led by the petitioner corporation before the labour court and thereafter by application Exh.52, the petitioner corporation has closed the evidence. Thereafter, the respondent workman was examined at Exh.53 and thereafter, his evidence was closed vide Exh.55. The labour court has considered the question as to whether on the basis of the fresh evidence of the witness Mr.A.J.Murad, charge leveled against the respondent workman stands proved or not and whether the respondent workman is entitled to reinstatement with continuity of service and backwages or not ? After appreciating the evidence came on record and considering the evidence of witness Mr.Murad at Exh.50, the labour court has come to the conclusion that the charge levelled against the respondent workman that he had not issued tickets to forty passengers and fare was collected, was not proved before the labour court. On the contrary, considering the evidence of Mr.Murad, the labour court has come to the conclusion, said forty tickets were found from the bus having regular punch though it is mentioned in the chargesheet that forty to forty one tickets were found by the checking staff.

Considering these evidence, the labour court has come to the conclusion that charge levelled against the respondent workman not proved but on the contrary the witness Mr.Murad has specifically admitted that he had not seen the respondent workman throwing tickets out of bus. Therefore, the order passed by the labour court granting reinstatement with continuity of service with consequential benefits while exercising the powers under Section 11-A of the Industrial Disputes Act, 1947, in view of this Court is just, legal and valid and therefore, same should not be disturbed by this Court while exercising the powers under Article 226 and 227 of the Constitution.

#. Now the question of grant of backwages awarded by the labour court requires to be examined by this Court. The respondent workman has been dismissed in the year 1986 and dispute has been raised in the year 1989. Thereafter, the matter remained pending before the labour court for period of eleven years. Specific observations in this regard are made by the labour court in para-9 of the award that because of the negligence on the part of the respondent workman, Reference remained pending for petty long time. The labour Court has also considered the evidence of gainful employment of the respondent that he was earning Rs.200 - 300 per month by doing miscellaneous work. This Court has taken into consideration the all these factual aspects as discussed by the labour court in para-9 and the fact that the dispute was referred after period of three years and the matter remained pending on account of negligence of the respondent workman for such long time. Thus, considering all these aspects as well as looking to the fact that though some negligence is proved before the labour court against the respondent workman coupled with the fact the respondent workman has misbehaved with the checking staff and not signed the statement of the passengers but despite of this fact, the labour court has not imposed any punishment to the respondent workman. Therefore some punishment ought to have imposed on the respondent by the labour court for the negligence of the respondent proved before the labour court. In above view of the matter, the award passed by the labour court, Surat in Reference No.315 / 1989 dated 6th January, 2001 is required to be modified accordingly.

#. Therefore, direction issued by the labour court, Surat while passing the award in Reference No.315 / 1989 dated 6th January, 2001 granting 25 % backwages for interim period is hereby quashed and set aside. However, the direction granting reinstatement with continuity of

service with all consequential benefits ordered to be intact and not disturbed by this Court. Moreover, considering the misconduct of the respondent workman, the respondent workman is ordered to undergo punishment of stoppage of one increment with cumulative effect. Award passed by the labour court, Surat while passing the award in Reference No.315 / 1989 dated 6th January, 2001 stands modified accordingly.

#. This petition is partly allowed accordingly. Rule is made absolute to the extend indicated hereinabove. No order as to costs.

Date : 19-3-2002 [H.K.Rathod, J.]

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